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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JOSHUA JESSE CANTU,

12 Plaintiff,

13 v.

14 JOHN DOE 1; JOHN DOE 2; P. WARD;
15 B. XIONG; P. DUNN,

16 Defendants.

Case No. 120-cv-00386-HBK

ORDER GRANTING AMENDMENT OF
COMPLAINT TO SUBSTITUTE JOHN DOE
DEFENDANTS 1 AND 2 AND DIRECTING
CLERK TO CORRECT CAPTION OF CASE

(Doc. No. 17)

17 Plaintiff Joshua Jesse Cantu, a *pro se* prisoner, initiated this action by filing a civil rights
18 complaint under 42 U.S.C. §1983. Plaintiff is proceeding on his First Amended Complaint
19 (“FAC”). (Doc. No. 7). On June 11, 2021, the Court ordered Plaintiff to provide written notice
20 identifying John Does 1-2 within ninety days for the Court to effect service of process. (Doc. No.
21 13). Plaintiff timely filed “Notice of John Doe Defendants” in compliance with this Court’s June
22 11 Order. (Doc. No. 17, “Notice”). The Court construes the Notice to include a motion under
23 Fed. R. Civ. P. 15(c) to substitute the John Doe Defendants 1 and 2 for the proper names in the
24 FAC. Plaintiff identifies John Doe 1 as “D. Cortez” and John Doe 2 as “J. Soto,” both as
25 Correctional Officers at North Kern State Prison. (*Id.* at 2).

26 Federal Rule of Civil Procedure 15(c), **Relation Back of Amendments**, provides:

27 (1) **When an Amendment Relates Back.** An amendment to the
28 pleading relates back to the date of the original pleading when:

1 (C) the amendment changes the party or the naming of the party
2 against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and
3 if, within the period provided by Rule 4(m) for serving the summons
4 and complaint, the party to be brought in by amendment:

5 (i) received such notice of the action that it will not be
6 prejudiced in defending on the merits; and

7 (ii) knew or should have known that the action would have
8 been brought against it, but for mistake concerning the proper
9 party's identity.

10 *Id.* (emphasis in original).

11 Plaintiff identifies the two John Doe Defendants by name, stating that he “has been
12 diligently seeking the true names of the John Does 1-2.” (Doc. No. 17 at 2). Although Plaintiff
13 did not submit a proposed Second Amended Complaint identifying the defendants by name
14 within the pleading as contemplated in Rule 15(c) and Local Rule 220, the June 11 Order did not
15 require him to do so. (*See* Doc. No. 13); *see also* Local Rule 220 (E.D. Ca. 2019)(stating in
16 relevant part that “changed pleadings” shall refer to the amended and supplemental pleadings and
17 **unless prior approval to the contrary is obtained**, every pleading to which an amendment or
18 supplement is permitted as a matter of right or has been allowed by the court order shall be typed
19 and filed so that it is complete in itself without preference to the prior or superseded pleading. . .
20 .”)(emphasis added).

21 A review of the FAC shows Plaintiff identifies “John Doe 1” and “John Doe 2” with
22 sufficient facts directed at each regarding their involvement in the alleged excessive use of force
23 at issue. (Doc. No. 7 at 3, 5). The use of force at issue appears to have happened in a continuum
24 involving several correctional officials. (*Id.* at 3, 5) (stating among other facts “John Doe 1 began
25 punching me with his closed fists to my head, face and body with extreme force. . . .”); (*Id.* at 6)
26 (stating “John Doe 2 began punching me also to my head, face, and body quite hard with extreme
27 force.”). Thus, a filing a Second Amended Complaint to merely substitute the names of the John
28 Doe Defendants 1 and 2 for the named Defendants is unnecessary.

Based on the foregoing, the FAC will remain the operative complaint in this action and
the Court will substitute John Doe Defendants 1 and 2 for the named defendants Plaintiff
identifies. *See, Altheide v. Williams*, Case No. 2:17-cv-02821JCM-BNW, 2020 WL 42462 * 1

1 (D. Nevada Jan. 3, 2020) (similarly treating previously filed complaint as the operative complaint
2 but substituting named-defendants for the John Doe Defendants). The Court further directs the
3 Clerk to correct the caption of the case to reflect the substitution of John Doe 1 and John Doe 2
4 for the named Defendants.

5 Accordingly, it is **ORDERED**:

6 1. Plaintiff's Notice (Doc. No. 17) seeking to amend the Complaint to substitute the John
7 Doe Defendants 1 and 2 is GRANTED and D. Cortez shall be substituted for John Doe 1 and J.
8 Soto shall be substituted for John Doe 2.

9 2. The Clerk shall correct the caption to reflect these substitutions.

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11 IT IS SO ORDERED.

12 Dated: July 6, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE